

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

CUSTOMS AND TAX ADMINISTRATION OF  
THE KINGDOM OF DENMARK  
(SKATTEFORVALTNINGEN) TAX REFUND  
SCHEME LITIGATION

MASTER DOCKET

18-md-2865 (LAK)

This document relates to: 19-cv-01869, 19-cv-01868, 19-cv-01800, 19-cv-01810, 19-cv-01813, 19-cv-01870, 19-cv-01792, 19-cv-01808, 19-cv-01815, 19-cv-01922, 19-cv-01928, 19-cv-01803, 19-cv-01929, 19-cv-01931, 19-cv-01783, 19-cv-01798, 19-cv-01788, 19-cv-01818, 19-cv-01812, 19-cv-01791, 19-cv-01801.

**STIPULATION AND [PROPOSED] ORDER DISMISSING COUNTERCLAIMS**

Plaintiff-Counterclaim-Defendant Skatteforvaltningen (“SKAT”) and Defendant-Counterclaim-Plaintiffs Cavus Systems LLC Roth 401(k) Plan, Hadron Industries LLC Roth 401(k) Plan, Crucible Ventures LLC Roth 401(k) Plan, Pinax Holdings LLC Roth 401(k) Plan, Sternway Logistics LLC Roth 401(k) Plan, Eclouge Industry LLC Roth 401(k) Plan, First Ascent Worldwide LLC Roth 401(k) Plan, PAB Facilities Global LLC Roth 401(k) Plan, Trailing Edge Productions LLC Roth 401(k) Plan, Cedar Hill Capital Investments LLC Roth 401(k) Plan, Fulcrum Productions LLC Roth 401(k) Plan, Limelight Global Productions LLC Roth 401(k) Plan, Keystone Technologies LLC Roth 401(k) Plan, Tumba Systems LLC Roth 401(k) Plan, Bareroot Capital Investments LLC Roth 401(k) Plan, Cantata Industries LLC Roth 401(k) Plan, Dicot Technologies LLC Roth 401(k) Plan, True Wind Investments LLC Roth 401(k) Plan, Roadcraft Technologies LLC Roth 401(k) Plan, Fairlie Investments LLC Roth 401(k) Plan and Monomer Industries LLC Roth 401(k) Plan (collectively, the “Counterclaim-Plaintiffs”), by and through their undersigned attorneys, hereby stipulate and agree as follows:

**WHEREAS**, on January 23, 2020, the Court issued its Memorandum Opinion (the “Utah Plans Opinion,” No. 18-md-2865 (LAK), ECF No. 261) granting SKAT’s motion to dismiss the counterclaims the Utah Plans (as defined in the Utah Plans Opinion) asserted against SKAT under Utah law for unjust enrichment and promissory estoppel.

**WHEREAS**, on January 23, 2020, the Court issued its Memorandum Opinion (the “Goldstein Opinion,” No. 18-md-2865 (LAK), ECF No. 262) granting SKAT’s motion to dismiss the counterclaims Goldstein (as defined in the Goldstein Opinion) asserted against SKAT, including, *inter alia*, under New York law for promissory estoppel.

**WHEREAS**, on February 3, 2020, the Counterclaim-Plaintiffs each filed responsive pleadings to SKAT’s complaints, in which they asserted materially identical counterclaims against SKAT under New York law for unjust enrichment and promissory estoppel.<sup>1</sup>

**WHEREAS**, on February 24, 2020, the Court so ordered SKAT’s and Counterclaim-Plaintiffs’ stipulation (the “Dismissal Order,” No. 18-md-2865 (LAK), ECF No. 271) dismissing the counterclaims for the reasons set forth in the Utah Plans and Goldstein Opinions, without prejudice to the Counterclaim-Plaintiffs’ right to appeal.

**WHEREAS**, on June 29 and July 3, 2020, the Counterclaim-Plaintiffs’ filed responsive pleadings to SKAT’s amended complaints, in which each pleaded again the same counterclaims against SKAT as in their February 3, 2020 pleadings.<sup>2</sup>

- 
1. *See* First Letter to Judge Lewis A. Kaplan from Michelle Rice re: Filing of Answers and Counterclaims, No. 18-md-02685, ECF Nos. 264, 264-1-2, 264-4-5, 264-8-11, 264-13-18, 264-20-22 & 264-24-25; Letter to Judge Lewis A. Kaplan from Michael G. Bongiorno re: Filing of Answers, No. 18-md-02685, ECF Nos. 266 & 266-4-5.
  2. *See* Letter to Judge Lewis A. Kaplan from Michelle Rice re: Answers Filed in Related Actions, No. 18-md-02685, ECF Nos. 399, 399-1-2, 399-4-5, 399-8-12, 399-13, 399-15-18, 399-20-22 & 399-24-25; Letter to Judge Lewis A. Kaplan from Michael G. Bongiorno re: Answers filed in the MDL, No. 18-md-02685, ECF Nos. 380 & 380-4-5.

**WHEREAS**, SKAT otherwise intends to move the Court for an order dismissing the counterclaims pleaded by Counterclaim-Plaintiffs in their June 29 and July 3, 2020 pleadings on the grounds that such claims are barred by the Dismissal Order and on the bases of the Utah Plans Opinion and Goldstein Opinion.

**NOW THEREFORE**, the parties hereby stipulate and agree as follows:

1. The Court's Dismissal Order applies to the counterclaims the Counterclaim-Plaintiffs repleaded in their June 29 and July 3, 2020 pleadings.
2. For the reasons set forth in the Dismissal Order, the Counterclaim-Plaintiffs' counterclaims should be, and by this Order are hereby, dismissed without prejudice to Counterclaim-Plaintiffs' rights to appeal.
3. SKAT shall not be required to file an answer to the Counterclaim-Plaintiffs' counterclaims or otherwise move to dismiss the counterclaims pursuant to Federal Rule of Civil Procedure 12(b).

Dated: New York, New York  
August 5, 2020

By: /s/ Michelle A. Rice  
(e-signed with consent)  
Michelle A. Rice  
KAPLAN RICE LLP  
142 West 57th Street, Suite 4A  
New York, NY 10019  
Telephone: (212) 235-0300  
Fax: (212) 235-0301  
mrice@kaplanrice.com  
*Counsel for Defendants-Counterclaim-Plaintiffs Crucible Ventures LLC Roth 401(k) Plan, Pinax Holdings LLC Roth 401(k) Plan, Sternway Logistics LLC Roth 401(k) Plan, Eclouge Industry LLC Roth 401(k) Plan, First Ascent Worldwide LLC*

By: /s/ Marc A. Weinstein  
Marc A. Weinstein  
HUGHES HUBBARD & REED LLP  
One Battery Park Plaza  
New York, New York 10004-1482  
Telephone: (212) 837-6000  
Fax: (212) 422-4726  
marc.weinstein@hugheshubbard.com  
*Counsel for Plaintiff-Counterclaim-Defendant Skatteforvaltningen (Customs and Tax Administration of the Kingdom of Denmark)*

*Roth 401(k) Plan, PAB Facilities Global LLC Roth 401(k) Plan, Trailing Edge Productions LLC Roth 401(k) Plan, Cedar Hill Capital Investments LLC Roth 401(k) Plan, Fulcrum Productions LLC Roth 401(k) Plan, Limelight Global Productions LLC Roth 401(k) Plan, Keystone Technologies LLC Roth 401(k) Plan, Tumba Systems LLC Roth 401(k) Plan, Bareroot Capital Investments LLC Roth 401(k) Plan, Cantata Industries LLC Roth 401(k) Plan, Dicot Technologies LLC Roth 401(k) Plan, True Wind Investments LLC Roth 401(k) Plan, Roadcraft Technologies LLC Roth 401(k) Plan, Fairlie Investments LLC Roth 401(k) Plan, and Monomer Industries LLC Roth 401(k) Plan*

By: /s/ Alan E. Schoenfeld  
(e-signed with consent)  
Alan E. Schoenfeld  
WILMER CUTLER PICKERING HALE  
AND DORR LLP  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Telephone: (212) 230-8800  
alan.schoenfeld@wilmerhale.com

*Counsel for Defendants-Counterclaim-Plaintiffs Cavus Systems LLC Roth 401(k) Plan, and Hadron Industries LLC Roth 401(k) Plan*

SO ORDERED:

---

Hon. Lewis A. Kaplan  
United States District Judge